

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA)	CASE NO.: 5:09CV272
)	
Plaintiff,)	JUDGE JOHN ADAMS
)	
v.)	<u>ORDER</u>
)	
CITY OF AKRON, et al.)	
)	
)	
)	
Defendants.)	

On January 17, 2014, the Court approved of the parties' Consent Decree in this matter. In large part, the Court's approval stemmed from the finalization of the Long Term Control Plan Update ("LTCP Update"), a document providing specific dates and deadlines for all of the projects contemplated under the Decree. On September 20, 2016, the Court approved the First Amendment to the Consent Decree.

Now pending before this Court is the parties' motion to approve the Second Amendment to the Decree. On April 18, 2019, the Court conducted a telephone conference regarding the pending motion. During that conference, the Court inquired as to whether the City of Akron was in full compliance to date with its responsibilities laid out in the LTCP Update. For the first time, the Court learned that Akron was not in compliance.

The LTCP Update required achievement of full operation of the Ohio Canal Tunnel by December 31, 2018. As of the date of the hearing, the tunnel still has not become operational. Based upon the statements of counsel, it appears that all parties were aware of Akron's failure to remain in compliance. However, the Court has not been apprised as to whether stipulated penalties contained in Paragraph 35 of the Decree have been imposed on Akron for its failure to timely implement one of the requirements of the LTCP Update. In addition, the parties were unable to detail the possible environmental affects that will result from Akron's failure to complete the tunnel in a timely manner.

Accordingly, the Court hereby orders that the parties file a detailed and specific status report with the Court. The report will include details on all of the following items:

- 1) When Akron learned that it would not meet the tunnel completion deadline;
- 2) When Akron informed the United States and State of Ohio that it would not meet the deadline;
- 3) Details surrounding the parties' discussions over supplemental projects that would be designed to alleviate some portion of the harm caused by the delay in completion of the tunnel, including the cost and completion date of those projects;
- 4) Any identifiable environmental effects of the delay including any overflow events that have occurred after the December 31, 2018 deadline;
- 5) Whether the performance criteria for the tunnel – “No more than 7 CSOs --- Racks 4 and 37: 0 CSOs” – has been met in 2019;
- 6) The expected final completion and full operation date of the Ohio Canal Tunnel;

- 7) Whether the United States or State of Ohio have calculated and/or imposed the stipulated penalties contained in the Decree;¹
- 8) Whether there has been any other non-compliance, regardless of whether it has been excused by the United States EPA or the Ohio EPA, by the City of Akron; and
- 9) The current status of the existing projects that the parties seek to modify with the Second Amendment, including whether Akron is in compliance with all deadlines for those projects.

The status reports shall be filed by no later than 4:00 p.m. on April 29, 2019.

IT IS SO ORDERED

April 22, 2019

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT COURT

¹ Pursuant to paragraph 35 of the Decree, the penalties that “shall accrue” appear to total \$390,000 as of the date of this order.